IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.6.2006

CORAM :

THE HONOURABLE MR. JUSTICE S.ASHOK KUMAR

Crl.R.C.No.1304 of 2003

H.Thenmozhi ... Petitioner

Versus

1. The Inspector of Police
   P.R.C. Unit
   St. Thomas Mount Police Station
   Chennai - 600 016

2. Kaliyaperumal ... Respondents

This Criminal Revision Petition is filed against the judgment of acquittal dated 28.1.2003 made in S.C.No.68 of 2001 on the file of the Principal Sessions Judge, Chengalpattu.

For Petitioner : Mr.P.S.Balasubramaniam
For Respondents : Mr.N.Kumanan Government Advocate (Crl.side) for R1
Mr.V.Chandrakanthan for R2

ORDER

This criminal revision case has been filed by the complainant/P.W.1 in S.C.NO.68 of 2001 on the file of the learned Principal Sessions Judge, Chengalpattu.

2. The sole accused in S.C.No.68 of 2001 is the brother-in-law of the complainant's husband/P.W.3. The complainant and P.W.3 loved each other and married. P.W.1 admittedly belongs to Scheduled Caste as proved by Ex.P.2, Community Certificate of P.W.1. The accused belongs to Yadavar Community as seen from Ex.P.3, Community Certificate of the accused.

3. The case of the prosecution is that the marriage between P.W.3 and P.W.1 was not accepted by the family of P.W.3, since it was a love marriage and also because of the fact that P.W.1 belongs to Scheduled Caste community. The accused often used to abuse P.W.1 by using the

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name of caste. When P.W.3 questioned the accused as to why he is calling her community name, the accused said to have stated that because he married with the Scheduled Caste lady, he is calling her so.

4. On 22.12.1996 at 10.00 A.M. when P.W.1 went to purchase provisions at a shop near Lavender School, the accused said to have abused her by saying "இதோ வரா பாரு பறத் தேவடியா உன்னை சும்மா விடமாட்டேன்" thus humiliated her within the public view. The occurrence was witnessed by P.W.2 Suresh and one Bulkhani. When P.W.3, husband of P.W.1, returned after his duty in the night, P.W.1 informed about the occurrence and on the next day on 23.12.1996 in the morning P.W.1 and P.W.3 along with P.W.2 Suresh and Bulkhani went to St.Thomas Mount Police Station where P.W.1 preferred the complaint Ex.P.1. The Sub Inspector of Police, received the complaint on 27.12.1996 and registered a case in Crime No.14 of 1996 under Section 3(1)(x) of SC/ST (PA) Act. He prepared the printed First Information Report, which was said to have been registered by him. On receipt of the printed First Information Report, P.W.6, the Inspector of Police, took up investigation and inspected the place of occurrence and enquired P.W.1 Thenmozhi, Bulkhani, P.W.2 Suresh, and P.W.3 Haridoss. On 7.1.1997 at 4.00 P.M. the Inspector of Police arrested the accused and as per the Government Order he sent the case records to the Deputy Superintendent of Police, PCR Wing, for further investigation.

5. P.W.4, Karuppaiah, who was working as Revenue Officer, has issued Ex.P.2, Community Certificate of P.W.1 and P.W.5 Subramaniam, who was working as Tahsildar, has issued Ex.P.3 community certificate of the accused. P.W.7, Jawahar Chandrasekar, who was working as Deputy Superintendent of Police, St.Thomas Mount, took up further investigation in this case on 18.5.1997. The Deputy Superintendent of Police enquired the witnesses namely P.W.1 Thenmozhi, Bhulkhanin, P.W.2 Suresh, P.W.3 Haridoss. He sent the case records to the Deputy Superintendent of Police, PCR Wing, who after completion of further investigation laid the charge sheet against the accused for the offence under Sections 3(1) (x) of SC/ST(PA) Act on 11.11.1997.

6. Before the trial Court, P.W.1 to P.W.7 were examined and Exs.P.1 to P.4 were marked on behalf of the prosecution. On behalf of the accused no witness was examined and no document was marked.

7. After conclusion of the trial, the learned Principal Sessions Judge, Chengalpattu has acquitted the accused on the ground that there is a delay in lodging the complaint and the complaint was lodged only as a counter-blast to the complaint given by the mother-in-law of P.W.1, who was residing in the house of her daughter namely the elder sister of P.W.3, in the house of the accused and also that the case was investigated by the Inspector of Police contrary to Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

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1989, when the Rule contemplates that such an offence should be investigated only by the Officer not below the rank of a Deputy Superintendent of Police. Aggrieved over the acquittal of the accused, this revision petition has been filed.

8. The fact that P.W.1, Thenmozhi belongs to Scheduled Caste and the accused and P.W.3, husband of P.W.1, belong to Yadavar Community is not in dispute. The fact that the marriage between P.W.1 and P.W.3 is a love marriage which was not accepted by the family of P.W.3 also is not in dispute. While so, the mother of P.W.3, who was residing in the house of her daughter namely the elder sister of P.W.3 in the house of the accused, has filed a suit in O.S.No.1154 of 1996 in the Court of District Munsif, at Tambaram on 4.12.1996. Following the filing of the suit, Rukmani Ammal, the mother of P.W.3 (the husband of P.W.1), has also lodged complaints dated 20.11.1996 and 21.12.1996 before the police Station against P.W.3 as seen from the two receipts filed along with written statement of the accused.

9. Therefore, it will be seen that the complaint of a alleged occurrence said to have taken place on 22.12.1996 could be only a counter-blast to earlier two complaints lodged by the mother of P.W.3, who is none other than the husband of P.W.1.

10. Even as regards the complaint preferred by P.W.1 that is Ex.P.1 there are certain discrepancies as seen from the evidence of P.W.1. According to P.W.1, she preferred a written complaint, whereas Ex.P.1 is actually in a typed form. Further, according to P.W.1, she lodged a complaint in the morning on 23.12.1996 whereas P.W.6, the Inspector of Police, would admit that the complaint was lodged only on 27.12.1996 and thus there is a contradiction with regard to date on which the complaint was preferred by P.W.1. Further there is no explanation for the delay in filing the complaint.

11. Learned trial Judge has further held that the case was investigated by P.W.6, the Inspector of Police. As per rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 investigation of an offence of this nature ought to have been investigated by an officer not below the rank of a Deputy Superintendent of Police, but in this case, P.W.6, the Inspector of Police, had investigated and examined the witnesses and there is also no evidence to show that P.W.6 was authorised by the Deputy Superintendent of Police to investigate the matter.

12. Learned counsel for the petitioner contends that the acquittal of the accused by the trial Court is wrong since P.W.1 was insulted in a public place in the presence of others which has been corroborated by the evidence of P.W.2 and therefore the offence of this nature should have been seriously viewed by the Court.

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13. The case of this nature should be investigated by the Police Officer not below the rank of Deputy Superintendent of Police have been observed by this Court in the cases reported in 1998 (3) Crimes 279 (A.SASIKUMAR V. THE SUPERINTENDENT OF POLICE, VILLUPURAM AND 3 OTHERS) and in 2000 Crl.L.J. 956 (CHINNASAMY V. STATE).

14. Offence of this nature is easy to foist because it requires neither an enquiry nor a property but difficult to defend because mere averment that the accused used such words in a public place with the intention of insulting the member of scheduled caste is sufficient for constituting an offence and therefore such kind of offence is very often misused so as to wreck vengeance for a prior motive or litigation.

15. It is because of this reason the legislature has mentioned Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 wherein it is enumerated that such offence should be investigated by a responsible officer not below the rank of a Deputy Superintendent of Police. Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as follows:

> 7. Investigating Officer: (1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director-General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.
>
> (2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.
>
> (3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director-General of Police shall review by the end of every quarter the position of all investigations done by the Investigating Officer.

16. These rules have been framed by the Central Government in exercise of rule making power conferred under Section 23 of the Act. The purpose of the Act and the object sought to be attained by it is to minimise the offences against the members of the Scheduled Caste and

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Scheduled Tribe. At the same time, keeping in mind that it is easy to foist a case of this nature and to ensure that the provisions of the Act are not misused. Rule 7 of the Rules lays down not only that the investigation should be done by an officer not below the rank of Deputy Superintendent of Police but also lays down that such officer should be specifically appointed by the State Government for investigating the offences under the Act. It further lays down that while appointing such Officers the Government should take into consideration his past experience, sense of ability and justice to perceive the implications of the case.

17. As far as this case is concerned, the investigation has been done by the Inspector of Police and the same has been forwarded to the Deputy Superintendent of Police to investigate the matter. Since such investigation by the Inspector of Police goes to the root of the matter, it vitiates the entire proceedings and therefore, the accused was rightly acquitted by the Principal Sessions Judge, Chengalpattu.

18. In the result, the acquittal of the accused by the Principal Sessions Judge, Chengalpattu does not call for any interference and hence this criminal revision case is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Principal District Judge,
   Chengalpattu.

2. The Inspector of Police
   P.R.C. Unit
   St. Thomas Mount Police Station
   Chennai - 600 016

3.The Public Prosecutor,
High Court, Madras 104.

+1cc to Mr.P.S.Balasubramaniam, Advocate Sr 24028

+1cc to Mr.V.Chandrakanthan, Advocate Sr 24051

TM (CO)
km/3.7. Crl.R.C.No.1304 of 2003

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